



Mwangima & another v Kalela (Environment and Land Miscellaneous Application E006 of 2025) [2025] KEELC 4791 (KLR) (Environment and Land) (30 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4791 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E006 OF 2025**

EK WABWOTO, J

JUNE 30, 2025

BETWEEN

MAGHANGA MWANGIMA 1ST APPLICANT

JONAM MAGHANGA 2ND APPLICANT

AND

FRANCISCAR CHAO KALELA RESPONDENT

RULING

1. Maghanga Mwangima and Jonam Maghanga the Applicants herein have moved this court *vide* their application dated 18th July 2024 seeking for orders that this court do order the transfer of Wundanyi SPMCC ELC E005 of 2024 *Francisca Chao Kalela v Maghanga & Another* to this court for hearing and disposal.
2. The said application is supported by the grounds on its face and the supporting affidavit sworn on 18th July 2024 by Maghanga Mwangima. It is deponed that the matter is *res judicata vide* Mombasa CMCC No. 808 of 2011 *Francisca Chao Kalela v Jonam Maghanga*. It was also deponed that the trial Magistrate Hon. D. Wangeci – PM was requested to disqualify herself in the matter but declined and further that the Applicants have filed a Counter claim seeking for revocation and/or cancellation of the suit property’s title which orders can only be issued by this court.
3. The application was opposed by the Respondent vide a Replying Affidavit sworn by Francisca Chao Kalela on 17th September 2024. It was contended that the application is based on lies and fabrication against the trial court and that contrary to the assertions made by the Applicants, the Applicants made an oral application for recusal which was objected to and the Applicants were directed to file a formal application which they did not file and thus failed to comply with the directions and orders issued by the court.



4. It was averred that the Applicants later filed a Preliminary Objection upon which the trial court gave directions for its disposal by way of written submissions but the said directions were not complied with. It was further averred that there has been no demonstration of bias or any justifiable reason as to why the suit Wundanyi MELCC No. E005 of 2024 cannot be heard by the said court. The court was urged to dismiss the said application.
5. Having considered the application and the rival affidavits filed, the main issue for determination is whether this court should transfer Wundanyi MCELC E005 of 2024 to this court for its hearing and determination.
6. In respect to transfer of suits, Section 18 of the *Civil Procedure* states as follows:-
 - “ 1. On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage:-
 - a. Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
 - b. Withdraw any suit or other proceeding pending in any Court subordinate to it, and thereafter:-
 - i. Try or dispose of the same; or
 - ii. Transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
 - iii. Re-transfer the same for trial or disposal to the Court from which it was withdrawn”.
7. Section 13 of the *Environment and Land Court Act*, 2011 provides as follows:-
 - “ 1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
 2. In exercise of its jurisdiction under Article 162 (2) (b) of the *Constitution*, the Court shall have power to hear and determine disputes:-
 - a. Relating to environment planning and protection climate issues, land use planning, title tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - b. relating to compulsory acquisition of land;
 - c. relating to land administration and management;
 - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land; and



- e. any other dispute relating to environment and land.
3. Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the *Constitution*”.
8. The aforementioned statute also gives jurisdiction to Magistrate Courts to handle environment and land matters within their area of jurisdiction. Sections 25 and 26 of the Act provides as follows:-

“Section 26 of the [Environment and Land Court Act](#) is amended by inserting the following sub-sections immediately after sub-section (2) –

3. The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.
4. Subject to Article 169 (2) of the *Constitution*, the magistrate appointed under sub-section (3) shall have jurisdiction and power to handle:-
 - a. Disputes relating to offences defined in any Act of Parliament dealing with environment and land; and
 - b. Matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the *Magistrate’s Court Act*”.

Again Section 9 of the Magistrate’s Court [Act No. 26 of 2015](#) provides:-

- “9. Claims in Employment, labour relations claims; land and environment cases.
A Magistrate Court shall

- a. In the exercise of the jurisdiction conferred upon it by Section 26 of the [Environment and Land Court Act](#) (No. 19 of 2011) and subject to the pecuniary limits under Section 7(1), hear and determine claims relating to:-
 - i. Environment planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - ii. Compulsory acquisition of land;
 - iii. Land administration and management;
 - iv. Public, private and community land and contracts, choses in actions or other instruments granting any enforceable interests in land; and
 - v. Environment and land generally”.

9. Section 80 of the [Land Registration Act](#) Cap 12A of the Laws of Kenya stipulates that, the court may order the rectification of the register by directing that any registration be cancelled or amended



if it is satisfied that any registration was obtained, made or omitted by fraud or mistake and that the register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.

10. Having considered the aforementioned provisions, it is the finding of this court that the Magistrates Court has jurisdiction to hear and determine disputes relating to title to land. There is no specific provision barring the Magistrates Court from hearing and determining the issues raised by the Applicants so long as they fall within the pecuniary and territorial jurisdiction of the trial court.
11. Consequently, the application dated 18th July 2024 is unmerited and the same is hereby dismissed. Each party to bear own costs. This being a Miscellaneous application, the said file shall be closed. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 30TH DAY OF JUNE 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Maghanga Mwangima the 1st Applicant in person.

N/A for the 2nd Applicant.

Mr. Mutinda for the Respondent.

Court Assistant: Mary Ngoira.

